

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re:

BALLANTYNE BRANDS, LLC,
a Delaware limited liability company,

Debtor.

In re:

BALLANTYNE BRANDS, LLC,
a North Carolina limited liability company,

Debtor.

Case Number 19-30083

Chapter 11
(Jointly Administered)

Case Number 19-30084

Chapter 11
(Jointly Administered)

**FINAL APPLICATION OF PEARCE LAW PLLC
FOR ALLOWANCE OF COMPENSATION AND REIMBURSEMENT
OF EXPENSES**

Applicant:	PEARCE LAW PLLC
Representing:	Debtors (application is made only in case number 19-30083)
Date of Retention:	Effective as of the Petition Date
Period for compensation and Reimbursement:	January 18, 2019 through February 27, 2019 (the Application Period)
Amount of Fees Requested:	\$32,540.00
Amount of Expenses (excluding PACER) for Reimbursement:	\$ 436.41
Amount of PACER Expenses	\$0
Total:	\$ <u>32,976.41</u>

This is a FINAL application.

Pursuant to 11 U.S.C. §§ 330 and 331, and Fed. R. Bankr. P. 2016 and 2002(a)(6), and the *Order Confirming Joint Plan of Liquidation*, entered on September 3, 2019 (Doc. 181), PEARCE LAW PLLC applies for the allowance of professional fees and the reimbursement of expenses, and states and represents as follows:

1. The allowance of professional fees and expenses is governed by 11 U.S.C. §§ 330 and 331 and Fed. R. Bankr. P. 2016.

2. The Court has jurisdiction over this Application under 28 U.S.C. §§ 157 and 1334. This is a core matter under 28 U.S.C. § 157(b)(2).

3. Ballantyne Brands, LLC, a Delaware limited liability company (*Ballantyne Brands*), and Ballantyne Brands, LLC, a North Carolina limited liability company, are the debtors and filed separate petitions for relief on January 18, 2019.

4. The Court approved Ballantyne Brands' application to employ Pearce Law PLLC. [Doc. 41.]

5. Pearce Law has performed necessary and reasonable services, and incurred reasonable expenses, on behalf of Ballantyne Brands .

Description of Services Rendered

6. During the Application Period, the major items I worked on included extensive work on preparing first day motions, especially given significant pre-petition defaults on the debtor's intellectual property licenses on its only saleable product; and extensive work to understand the cash needs of the debtor during the projected life of the bankruptcy case.

7. A detailed description of services rendered is set forth on *Exhibit 1*. Exhibit 1 is prepared from time records entered when the services were rendered or shortly thereafter. These records are kept as business records in the ordinary course of business by Pearce Law.

8. Usually, I reserve the right not to charge clients for brief telephone calls or email communications. Such matters might be reflected in the timekeeping entries on Exhibit 1.

9. The descriptions in Exhibit 1 are intended to be reasonably descriptive and to satisfy the requirements described in *Rum Creek Coal Sales, Inc. v. Caperton*, 31 F.3d 169, 179–80 (4th Cir. 1994) (in seeking allowance of fees, lawyers must “describe specifically the tasks performed,” and not just state “letter to client” or “legal research”).

10. I believe that the services rendered on behalf of Ballantyne Brands were reasonable.

Rate Amount and Reasonability

11. I charged \$400.00 per hour for work on behalf of Ballantyne Brands. This rate was my standard rate when I originally was contacted by Ballantyne Brands. I ordinarily charge and collect a higher rate from clients.

12. This rate is reasonable. In 2014, before forming Pearce Law, I charged local clients \$550 per hour and national clients \$750 per hour.

13. When forming Pearce Law, I reduced my hourly rate to reflect, among other things, lower overhead.

14. I was admitted to practice law in North Carolina and this Court in 1991. I am a graduate of Harvard Law School, *cum laude*, 1991. I am admitted to all federal courts in North Carolina and to the United States Courts of Appeal for the Fourth, Eighth, and Eleventh Circuits. I am an author for the American Bankruptcy Institute's Volo Circuit Court Opinion First Responder service (<https://volo.abi.org>). I am a Senior Fellow of the Litigation Counsel of America, and have spoken at professional conferences, most recently in December 2016.

15. My rate is reasonable.

Lodestar Reasonability

16. The amounts requested for my fees are reasonable under traditional lodestar analysis and 11 U.S.C. § 330.

17. Before entering into bankruptcy, the debtor (Ballantyne Brands, LLC, the North Carolina entity, existed on paper only) was in financial disarray notwithstanding the efforts of Mr. Roberts, Ballantyne Brands' President, to establish order out of chaos. The number of Ballantyne Brands' employees had drastically diminished before the commencement of the bankruptcy case. Several lawsuits had been settled with no apparent strategic plan. There was no endgame on the petition date; the status of the electronic cigarette industry was (and remains) in flux due to litigation and regulation.

18. This led to controversy with Fontem once Ballantyne Brands entered bankruptcy.

19. In that regard, I worked with Fontem's counsel and with Ballantyne

Brands' officers and personnel to gather information that would allow the parties to have informed discussions based on facts that both sides could agree were reasonably correct.

20. This is but one example of the unusual circumstances encountered after the petitions were filed.¹

Discounts for Services Rendered

21. Usually, I do not charge for routine telephone calls with clients. Those calls frequently do not show up on billing records or invoices.

22. In my discretion, I have discounted certain time entries. Certain discounts are shown on Exhibit 1. However, there may be circumstances where I turned off time-keeping software or manually reduced the time entry before preparing the invoice attached as Exhibit 1 (discounts in the latter category thus are not reflected on Exhibit 1).

23. I also do not charge for my time incurred with certain administrative tasks, such as time spent having copies made or going to the post office. Time spent on these tasks may not be shown on Exhibit 1.

24. Where time entries state there is "NO CHARGE" the time associated with the task is omitted from, or the discount is shown on, Exhibit 1.

¹ Another example is the refiling of certain documents required for Ballantyne Brands, LLC, a North Carolina limited liability company. Prior management for Ballantyne Brands had conducted business as a North Carolina limited liability company on occasion, and had filed Articles of Organization with the North Carolina Secretary of State. Prior management had not, however, obtained an EIN for the North Carolina EIN. An EIN was obtained after filing and amended documents were filed with the Court.

25. The discounts shown on Exhibit 1 were not previously negotiated.

Expense Reimbursement Guidelines, As Applied to this Application

26. As a matter of course, I do not charge my clients for mail sent to my clients, for small copy or print jobs, for mileage, or for modest parking expenses.

27. I do charge clients for out-of-pocket expenses that are not immaterial, including filing fees, overnight delivery fees, large copy charges, are large mailing fees.

28. The expenses requested in this Application are for relatively larger print and postage transactions involving creditors.

29. There are no PACER charges included in this Application. Such charges ordinarily are included in my overhead.

Interim Compensation

30. Pearce Law has not received any interim compensation.

31. Before the commencement of the cases, Pearce Law received a \$30,000 retainer to pay for pre-filing fees and expenses. \$3,434 of this retainer was used for filing fees for the two debtors. The remainder was used for pre-petition fees, including significant fees incurred in investigating the relationship between Ballantyne Brands (as defined above) and the North Carolina limited liability company bearing the same name. Pearce Law wrote off (forgave) all amounts fees that had been earned but that were unpaid as of the petition date.

Sharing of Compensation

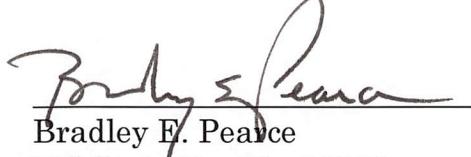
32. No compensation has been or will be shared.

Notice

33. Notice of this Application has been given to: the United States Bankruptcy Administrator for this district; the 20 largest unsecured creditors in the Ballantyne Brands, LLC, a Delaware limited liability company, bankruptcy case (19-30083); and all persons and entities receiving electronic notice via ECF.

WHEREFORE, Pearce Law PLLC respectfully requests that the Court allow Pearce Law compensation in the amount of \$32,540.00, that the Court allow Pearce Law to be reimbursed out-of-pocket expenses in the amount of \$436.41, for a total of \$32,976.41, and that the Court grant Pearce Law such additional relief as the Court deems reasonable and just.

October 3, 2019

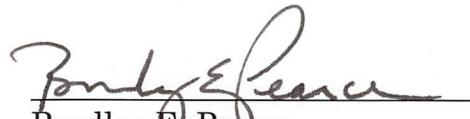


Bradley E. Pearce
NC State Bar No. 18368
PEARCE LAW PLLC
101 N. Tryon Street, Suite 112
Charlotte, NC 28246
704-910-6385
980-321-0593 (fax)
brad@bepearcelaw.com

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing application has been served on the date hereof on counsel for the Consolidated Debtor, the United States Bankruptcy Administrator, and to all parties and parties in interest receiving notice via ECF.

October 3, 2019



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INVOICE

Invoice # 1130

Date: 10/03/2019

Due On: 11/02/2019

Pearce Law PLLC

PO Box 31846
Charlotte, North Carolina 28231

Ballantyne Brands LLC, A Delaware Limited Liability Company
Suite 120 10700 Sikes Place
Charlotte, North Carolina 28277

00034-Ballantyne Brands LLC, a Delaware limited liability company

Debtor in possession (post-filing)

Type	Date	Notes	Quantity	Rate	Discount	Total
Service	01/22/2019	Draft: Finish, proof and file first day motions. (NO CHARGE FOR TIME SPENT FILING)	5.00	\$400.00	-\$200.00	\$1,800.00
Service	01/23/2019	Communications: Communications regarding DSC Services II security agreement.	0.70	\$400.00	-	\$280.00
Service	01/23/2019	Communications: Telephone conference with BB's corporate parents' officers regarding filing of petition and next steps	0.50	\$400.00	-	\$200.00
Service	01/23/2019	Draft: Prepare corrected application to employ Pearce as counsel for debtors (NO CHARGE)	0.50	\$0.00	-	\$0.00
Service	01/23/2019	Court: Prepare for and attend court for hearing on first day motions.	6.80	\$400.00	-	\$2,720.00
Service	01/24/2019	Draft: Prepare amended petition for Ballantyne Brands NC to add EIN and file same.	0.60	\$400.00	-	\$240.00
Service	01/24/2019	Draft: Prepare and serve notices of hearing on First Day Motions	2.20	\$400.00	75.0%	\$220.00
Service	01/25/2019	Draft: Draft and serve Notice of Commencement of Bankruptcy Case in Superior Court for Mecklenburg County, NC, to stop levy of bank account by Sheriff's department.	1.10	\$400.00	-	\$440.00

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Service	01/25/2019	Case Management: Upload documents to BA's website (tax returns and insurance documents)	0.60	\$400.00	-	\$240.00
Service	01/25/2019	Communications: Email with Mr. Roberts and others regarding possible formation of creditors' committee and other matters. (NO CHARGE)	0.40	\$400.00	100.0%	\$0.00
Service	01/31/2019	Meeting or Conference: Meet with Mr. Roberts et al. to discuss various issues relating to Fontem and case.	1.00	\$400.00	-	\$400.00
Service	02/04/2019	Draft: Draft Notice of Corrected Creditors' Addresses. (0.8). Begin drafting motion to reject lease (1.4).	2.20	\$400.00	-	\$880.00
Service	02/05/2019	Communications: Correspond with Mr. Barnhardt, counsel for Goodman Factors, regarding violation of automatic stay,	0.90	\$400.00	-	\$360.00
Service	02/06/2019	Draft: Prepare first draft of budget	1.50	\$400.00	-	\$600.00
Service	02/08/2019	Communications: Telephone conference with Mr. Roberts regarding budget (NO CHARGE).	0.20	\$400.00	100.0%	\$0.00
Service	02/08/2019	Communications: Telephone conference with Mr. Roberts, Ms. Wright and others regarding budget and other bankruptcy matters.	0.70	\$400.00	-	\$280.00
Service	02/10/2019	Draft: Prepare motion to reject lease for 10700 Sikes Place	2.00	\$400.00	-	\$800.00
Service	02/11/2019	Communications: Telephone call with Mr. Schilli, counsel for Fontem, regarding hearing (charge 0.1 only). Email with Mr. Guyden, counsel for Fontem, regarding information request (0.3). Multiple email regarding motion to reject lease (0.4).	0.80	\$400.00	-	\$320.00
Service	02/11/2019	Draft: Prepare quarterly cash collateral budget	0.60	\$400.00	-	\$240.00
Service	02/11/2019	Draft: Continue work on cash collateral budget	1.30	\$400.00	-	\$520.00
Service	02/11/2019	Communications: Telephone conference with Mr. Roberts et al. to discuss cash collateral budget.	30.00	\$400.00	-	\$12,000.00
Service	02/12/2019	Draft: Revise and circulate cash collateral budget	0.30	\$400.00	-	\$120.00
Service	02/12/2019	Communications: Email with Mr. Guyder, counsel for Fontem, regarding document	0.40	\$400.00	-	\$160.00

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production for intellectual property license claim						
Service	02/12/2019	Court: Hearing on first day motions.	2.30	\$400.00	-	\$920.00
Service	02/14/2019	Draft: Work on orders and notice of continued hearing on cash collateral.	4.50	\$400.00	-	\$1,800.00
Service	02/15/2019	Draft: Work on orders for first day motions.	1.80	\$400.00	-	\$720.00
Service	02/19/2019	Draft: Work on orders for first day motions. Finish and proof same.	2.90	\$400.00	-	\$1,160.00
Service	02/19/2019	Draft: Prepare draft letter to Fontem and circulate same for review and comment.	0.90	\$400.00	-	\$360.00
Service	02/19/2019	Draft: Draft motion to reject lease at Sikes Place. Circulate same.	2.80	\$400.00	-	\$1,120.00
Service	02/20/2019	Communications: Telephone conference with Messrs. Howard, McGill and Roberts regarding asset sale. (NO CHARGE)	0.30	\$400.00	100.0%	\$0.00
Service	02/20/2019	Communications: Email to Mr. Fajgenbaum, Judge Whitley's law clerk, regarding payments made on prepetition debts.	0.30	\$400.00	-	\$120.00
Service	02/20/2019	Draft: Revise Bank Account order and send to BA for approval.	0.30	\$400.00	-	\$120.00
Service	02/20/2019	Draft: Prepare and upload orders.	0.60	\$400.00	100.0%	\$0.00
Service	02/20/2019	Communications: Telephone conference with Ms. Abel, US Bankruptcy Administrator, regarding budget and other matters in case.	0.50	\$400.00	-	\$200.00
Service	02/20/2019	Draft: Further work on Ballantyne Brands orders.	1.00	\$400.00	-	\$400.00
Service	02/20/2019	Draft: Prepare draft letter to Fontem regarding past due license fees and license fees during bankruptcy.	0.90	\$400.00	-	\$360.00
Service	02/20/2019	Draft: Revise and update motion to reject lease. Email same to Ms. Wright for review with respect to representation that DSC will pay rent at new office space.	0.50	\$400.00	-	\$200.00
Service	02/21/2019	Draft: Revise, finish and file motion to reject lease and to abandon property. Prepare and file notice of opportunity for hearing on motion.	1.90	\$400.00	-	\$760.00
Service	02/21/2019	Communications: Telephone call with Clerk of Court regarding whether to file motion to reject lease and to abandon property as a	0.20	\$400.00	-	\$80.00

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motion to assume/reject or as a motion to abandon.						
Service	02/21/2019	Communications: Review order granting motion to use pre-petition bank accounts. Telephone conference with Mr. Fajgenbaum regarding email regarding pre-petition checks that cleared after the petition date.	0.20	\$400.00	-	\$80.00
Expense	02/21/2019	Reimbursable expenses: Copy costs for mailing of cash collateral and notice of hearing	1.00	\$179.86	-	\$179.86
Service	02/22/2019	Communications: Telephone call with Messrs. Howard, McGill, Rothman, et al. regarding Fontem and other issues.	0.40	\$400.00	-	\$160.00
Expense	02/22/2019	Postage: Postage for mailing First Day Motions and Notices on all creditors.	1.00	\$75.55	-	\$75.55
Expense	02/22/2019	Filing Fee: Filing Fee re motion to reject Sikes Place lease and to abandon property	1.00	\$181.00	-	\$181.00
Service	02/25/2019	Communications: Telephone call with prospective investment banker regarding proposed section 363 sale.	0.20	\$400.00	-	\$80.00
Service	02/25/2019	Draft: Prepare responses to Bankruptcy Administrator's questions regarding budget.	0.60	\$400.00	-	\$240.00
Service	02/25/2019	Communications: Email with Mr. Guyder, et al., regarding Fontem issues. Email with Ms. Abel and Ms. Kenny regarding budget and Fontem issue.	0.50	\$400.00	-	\$200.00
Service	02/25/2019	Draft: Revise and circulate cash collateral budget	0.60	\$400.00	-	\$240.00
Service	02/27/2019	Court: Attend 341 Meeting	1.00	\$400.00	-	\$400.00
Service	03/04/2019	Preparation: Prepare files to transfer to Mr. Wright (NO CHARGE)	3.00	\$400.00	100.0%	\$0.00
Line Item Discount Subtotal						-\$2,660.00
Total						\$32,976.41

Detailed Statement of Account

Current Invoice

Invoice # 1130 - 10/03/2019

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
1130	11/02/2019	\$32,976.41	\$0.00	\$32,976.41
			Outstanding Balance	\$32,976.41
			Total Amount Outstanding	\$32,976.41

Please make all amounts payable to: Pearce Law PLLC

Please pay within 10 days.